



## INSPECTOR GENERAL REPORT

2005-01-0034

July 18, 2005

### PORT COMMISSION WORKER'S COMPENSATION LOANS

*Inspector General David O. Thomas reports to Governor Mitchell E. Daniels, Jr., after an investigation by Special Agents Alan McElroy, Troy Stanton and Al Marshall, to-wit:*

This report focuses on loans advanced to Port Commission employees to supplement Worker's Compensation claims. An investigation commenced January 14, 2005.

The investigation shows that in December of 2000, Port Commission employee Kim House was in a vehicle accident with two other Port Commission employees, namely Warren Fasone and Sally Ludington. All three employees worked at the Burns Harbor facility in northern Indiana. Fasone was the driver of the vehicle which was struck in the rear by a truck. They had driven to Indianapolis for the annual Port Commission meeting and Christmas party. They stayed all night in Indianapolis and drove home the next day when the accident occurred. Kim House was injured in the accident and later received back surgery.

Kim House received Worker's Compensation benefits for her injuries over the next several years in an amount totaling \$29,014.71. She received Temporary

Total Disability benefits and a Permanent Partial Impairment rating according to Port Commission documentation.

Because Kim House's Worker's Compensation payments were less than what her Port Commission salary would have been, Port Commission Chairman Ken Massengill decided to compensate House for these lost earnings, with the intent to keep her income equal to what it was had she still been working.

Accordingly, she was receiving or seeking compensation from three sources: (1) Worker's Compensation benefits, (2) the Port Commission, and (3) from her anticipated recovery in a civil lawsuit.

James Thieman, the Port Commission's Chief Financial Officer, was interviewed at their main office in Indianapolis on March 7, 2005. Thieman provided copies of financial records involving Kim House as an employee of the Port Commission. He confirmed that Port Commission Chairman Massengill decided that he wanted to make certain that all three employees involved in the vehicle accident would receive full pay while they were off work. Thieman stated that he met with the above three employees at Burns Harbor shortly after the accident to discuss Massengill's decision on the pay. They all agreed to receive full pay while on medical leave and that they would reimburse the Port Commission on any Worker's Compensation or insurance settlements they received. Thieman said the Port Commission also paid the employees for any of their personal property that was damaged in the accident.

Thieman was asked for a copy of the Port Commission rules and policies to determine if this type of payment is covered in Port Commission policies. No

response was given.

State Board of Accounts auditor Al Marshall, currently assigned to the Inspector General's Office, conducted an audit thereafter on this specific issue. His findings showed that in addition to the \$29,014 Worker's Compensation benefits, Kim House also received from the Port Commission an additional \$898 for lost personal items, and an additional \$8,678 for wages. Partial repayment has been made, but there still remains \$6,548 owed to the Port Commission.

Likewise, employee Warren Fasone received \$481 for personal property damage, which has not been reimbursed. Employee Sally Ludington was advanced \$141 for personal property loss, which has been reimbursed.

On March 17, 2005, contact was made with Krysten Lester, the Policy and Procedure Analyst at the Worker's Compensation Board of Indiana. Lester advised that there was no specific Worker's Compensation violation for an employee to be paid a salary while receiving Worker's Compensation, and while she commented that this was unusual, she could not report that this was not a violation of other statutes.

She also articulated that Indiana is an "exclusive remedy" state and that an employee may not receive both a Worker's Compensation settlement and a civil lawsuit recovery from an employer. Even though House's lawsuit was against a third-party rather than her employer, she is still compelled to reimburse Worker's Compensation benefits if she made a recovery in her civil lawsuit.<sup>1</sup>

We make the following findings and recommendations:

1. State employees Kim House and Warren Fasone owe the Port

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<sup>1</sup> I.C. 22-3-2-13.

Commission and State of Indiana \$6,548 and \$481 respectively, all arising from payments that commenced in the year 2000. These amounts should be immediately paid or repayment documentation be provided to the Office of Inspector General within thirty days to avoid the initiation of forfeiture proceedings.

2. The Port Commission and Kim House should report in writing to the Worker's Compensation Board and the Office of the Inspector General within thirty days as to whether Kim House initiated a separate civil lawsuit for these injuries and the status of said lawsuit.

3. The Port Commission should promulgate an administrative rule to specify that similar loans should not be made in the future when employees are seeking a Worker's Compensation remedy or otherwise.

4. Port Commission employees should immediately be advised of Indiana's exclusive remedy law requiring benefit reimbursement to Worker's Compensation upon a civil lawsuit recovery.

Respectfully submitted this 18th day of July, 2005.



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David O. Thomas, Inspector General